

EXHIBIT AN

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CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

Page 1

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 SAN JOSE DIVISION

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5 -----
6 SENTIUS INTERNATIONAL, LLC,)
7 Plaintiff,)
8 vs.) Case No.
9 MICROSOFT CORPORATION,) 5:13-CV-825-PSG
10 Defendant.)
11 -----)
12
13 CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

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15 VIDEOTAPED DEPOSITION OF ROBERT MILLS
16 LOS ANGELES, CALIFORNIA
17 TUESDAY, NOVEMBER 18, 2014

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21 Reported by:
22 NANCY J. MARTIN, CSR No. 9504, RMR
23 JOB No. 1961772
24
25 PAGES 1 - 244

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

		Page 150	
1	Q. You have? When have you done that?	15:10:15	1 can -- in fact, I suspect Microsoft can't tell whether
2	A. Paragraph 161 of my report. I cite to sworn	15:10:36	2 a specific application has been used by a specific
3	testimony from a Microsoft witness in the Lucent trial		3 user, and the reason I think that's true is because
4	that testified that about half of Office users have		4 Microsoft conducts its own surveys to learn about
5	historically used Outlook. In particular -- let's		5 that. So I don't know that the parties could actually
6	see. He testified that "the big dogs" of Office were		6 track a royalty structure that way.
7	always Word, Excel, PowerPoint, in that order.		7 And then, of course, you have the issue with
8	Outlook is sort of a distant fourth.		8 people may start using an application -- may not use
9	Q. That actually reminds me of something I meant	15:11:23	9 it when they first purchase Office, but may start
10	to ask you earlier. In this Paragraph 161 --		10 using it at some point down in the future, and, you
11	withdrawn.		11 know, how would you handle that in a royalty-based
12	Okay. So you have -- in forming your		12 calculation. It becomes unmanageable, essentially.
13	opinions in this matter, have you taken into account		13 So I think that the most likely outcome would be that
14	any quantitative data with regard to the frequency at		14 the parties would agree to a royalty rate that would
15	which the accused applications are used, namely		15 be applied to the programs, and with the understanding
16	Outlook, PowerPoint, Word, Publisher, and OneNote?		16 that not all those programs will be used by every
17	A. Well, I had some of that information in mind	15:12:25	17 user.
18	as I was formulating my opinion, certainly, and I		18 Q. And yet, in your view, each of those programs
19	recognize that Outlook is not the most used of the		19 should have the same royalty rate?
20	products in the Office suite. In fact, it's,		20 A. Yes. I think if you were to try to restrict
21	according to Microsoft, a distant fourth. And, yet,		21 it down to just use, the rate would have to be much
22	I've included all of the copies of Outlook in my		22 higher because I couldn't use, in the effective
23	effective royalty rate calculation. I haven't limited		23 royalty rate calculation, all copies of Outlook. I
24	it to just those copies that have been used by		24 would use approximately 50 percent of those copies if
25	someone.		25 I were looking at just the number of people that use
		Page 151	
1	Q. With regard to the publisher application,	15:13:14	1 Outlook. So that in and of itself would double the
2	have you taken account of the frequency of which		2 rate.
3	Publisher is used in forming your opinions?		3 Q. Sorry. Can you explain that?
4	A. Well, it's my understanding that it's used	15:13:27	4 A. Yes. So Microsoft testified at trial, a
5	less frequently than the other four applications that		5 Microsoft witness, that historically only half of
6	I've mentioned.		6 Office users use Outlook, and if we were going down
7	Q. Is it used more or less frequently than	15:13:33	7 the line of trying to adjust rates based on usage,
8	OneNote?		8 then I would also have to consider that fact in my
9	A. I think I have seen data that speaks to that,	15:13:47	9 effective royalty rate calculation.
10	but I don't recall which of those two applications		10 Q. How would you do so?
11	garners more use.		11 A. I would look at the estimated -- I suppose
12	Q. Did that matter to you in forming your	15:13:56	12 the estimated number of people that have actually used
13	opinions?		13 it. I don't think that's the most likely way that the
14	A. No, because I haven't identified a different	15:14:00	14 parties would structure an agreement. So I haven't
15	royalty rate for each of the products that form the		15 done that. But that's, I think, the kind of analysis
16	suite. I had in mind that, as the baseline, I was		16 that you would have to consider.
17	using a product that was a distance fourth in terms of		17 Q. Were the claims that were at issue in the
18	popularity, and that was something that I certainly		18 Lucent case in the Day patent, were they apparatus
19	considered.		19 claims or were they method claims?
20	Q. So regardless of whether a given application	15:14:29	20 A. I would have to look back to be certain. My
21	was, in fact, used, you included it within your		21 recollection is that there were method claims
22	overall royalty calculation?		22 involved, but I would have to look back to be certain.
23	A. Yes, because I think the parties to a	15:14:43	23 I can't attest to that.
24	hypothetical negotiation would structure an agreement		24 Q. All right. Let me ask you about the terms of
25	that way. First of all, I don't know that Microsoft		25 the Lucent agreement. The monetary term of the Lucent

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

		Page 154		Page 155	
1	agreement was a lump sum payment; right?		1	in which the Court modified that award, that indicates	1
2	A. Yes. 15:20:16	15:20:17	2	that the amount was a function of the extent to which	2
3	Q. And what you have done, for purposes of your		3	Microsoft sold Outlook. In that kind of a situation	3
4	analysis in this case, is you have taken that lump sum		4	it's, in my view, appropriate to look at the amount as	4
5	payment and divided it by what you assume to be the		5	an effective amount per unit so we can draw	5
6	count for the products that were at issue in that case		6	comparisons between two settlement agreements that	6
7	to derive an effective per-unit royalty rate; right?		7	cover different quantities of use.	7
8	A. No, that's not quite correct. 15:20:39		8	Q. Well, let's turn to the background of the	15:24:54
9	Q. What did I get wrong? 15:20:41		9	Lucent decision. The Court in that matter was	
10	A. So the Lucent agreement was a lump-sum	15:20:44	10	performing a calculation to arrive at a lump-sum	
11	agreement in which Microsoft agreed to pay		11	valuation; right?	
12	████████. And I have not used the entirety of that		12	A. I think we need -- given the procedural	15:25:23
13	payment in my effective royalty rate calculation.		13	history of the case, I want to make sure that we're	
14	I've limited that calculation to the amount that was		14	talking about the same -- I think we're talking about	
15	actually awarded by the Court in the Lucent litigation		15	the same order, the same situation. That case was on	
16	for the date picker functionality in Outlook. If I		16	appeal and remanded, and I suspect you're talking	
17	had used the entire █████ as the basis for		17	about the order on the JMOL.	
18	calculating an effective royalty rate, the rate would		18	MR. GLITZENSTEIN: I am.	
19	be considerably higher.		19	Let me ask the court reporter to mark as	
20	Q. So thank you for that correction. So you	15:21:37	20	Mills Exhibit 7 from the Lucent v. Microsoft case, the	
21	took the figure that the judge in that case had chosen		21	order granting in part and denying in part Microsoft's	
22	for the damages amount and you divided -- for Outlook		22	motion for judgment as a matter of trial and the	
23	and you divided it by the number of units for Outlook;		23	alternative, a new trial with a remittitur.	
24	right?		24	(Deposition Exhibit 7 was marked for	
25	A. Yes, that's, in effect, the calculation. 15:22:16		25	identification.)	
		Page 155		Page 157	
1	Q. Now, is it always appropriate, in your view,	15:22:21	1	BY MR. GLITZENSTEIN:	
2	where there is a lump-sum agreement of any sort,		2	Q. This is the order that you were just	15:26:24
3	whether it's in settlement of litigation or otherwise,		3	referring to?	
4	to take that figure and divide it by the number of		4	A. Yes. 15:26:32	
5	units that might be encompassed by that agreement to		5	Q. And turn to Page 5, please, in that order. 15:26:33	
6	come up with an effective royalty rate?		6	And do you see in the last full paragraph at the	
7	A. Is the question is that always appropriate? 15:22:54		7	bottom of Page 5 the Court notes that Lucent was	
8	Q. Yes. 15:22:56		8	seeking a reasonable royalty based on the outcome of a	
9	A. I can't say that it would always be	15:23:05	9	hypothetical negotiation for a lump sum; right?	
10	appropriate. I mean I would have to think of every		10	A. I don't know that she's saying that in this	15:27:25
11	conceivable possibility before I could offer that		11	paragraph. She's describing what a lump sum royalty	
12	opinion. But I think in this case, it certainly is.		12	agreement is. But I don't see her, in that paragraph	
13	Q. Well, I want to understand your methodology	15:23:15	13	at least, saying that Lucent was seeking a lump sum	
14	first. In what situations is it appropriate to take a		14	royalty.	
15	lump-sum payment amount in a license agreement and		15	Q. I'm looking at Lines 21 and 22 on Page 5	15:27:38
16	divide it by the number of units that would be		16	where she says, "Lucent emphasizes that this is a	
17	encompassed by that agreement to arrive at a per-unit		17	reasonable royalty case based on the outcome of a	
18	effective royalty rate?		18	hypothetical negotiation for a lump sum; right?	
19	A. Well, that's something that I commonly do in	15:23:41	19	A. I see. That's not the paragraph that I was	15:27:50
20	practice, and other damages experts do as well, but		20	referring to. Yes, I see that.	
21	it's not always possible because we don't always have		21	Q. All right. So Lucent, in this case, wasn't	15:27:55
22	information about the number of units sold, for		22	seeking a royalty that would be determined on the --	
23	example. But in a situation like this, where we do		23	on a per-unit basis; right?	
24	have that kind of information and we have information		24	A. It was seeking a royalty that depended on the	15:28:09
25	about the trial testimony, the jury award, and the way		25	number of units sold.	

CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

		Page 222		Page 224
1	Q. Have you, in any of your other matters,	18:03:23	1	Microsoft as a product. So it's not so much the
2	confronted the situation of a reasonable royalty on a		2	dollar amount, but it's the proportion of Microsoft
3	subscription based product or service?		3	sales that are attributable to Office. That's a
4	A. I can think of examples where software	18:04:22	4	relevant factor.
5	maintenance is part of the case, and that's sold on a		5	Q. What's that relevant to? 18:09:51
6	subscription basis.		6	A. It shows that these -- the products at issue 18:09:52
7	Q. And that was -- was there a royalty collected	18:04:32	7	here are of paramount importance to Microsoft. These
8	on the maintenance component?		8	products account for a significant amount of its
9	A. I don't have a specific recollection of how	18:04:44	9	revenue and, roughly, half of its operating profit as
10	those agreements worked.		10	a company.
11	Q. Other than that, can you recall any other	18:04:49	11	Q. Again, what is that relevant to as part of 18:10:09
12	instance?		12	the opinions that you offer in this matter on what the
13	A. Let me think for just a moment. Again, I	18:04:58	13	appropriate measure of damages is?
14	reviewed a lot of license agreements.		14	A. Well, it demonstrates that the products here 18:10:20
15	(Pause in proceedings.)		15	are extremely important to Microsoft. And so that's
16	THE WITNESS: Nothing is immediately coming		16	something that I think is relevant under my analysis
17	to mind, but I haven't committed to memory all of the		17	of Georgia-Pacific. If the products were
18	agreements that I've reviewed, and I haven't thought		18	insubstantial and immaterial to Microsoft, then the
19	about that issue in detail.		19	outcome may be different.
20	BY MR. GLITZENSTEIN:		20	Q. Which Georgia-Pacific factor is this relevant 18:10:42
21	Q. In reaching your opinions in this matter, did	18:06:35	21	to?
22	you apply the entire market value rule, and if so,		22	(The witness reviewed the document.)
23	how?		23	THE WITNESS: It's relevant to
24	A. No, I did not.	18:06:44	24	Georgia-Pacific No. 8, which is the established
25	Q. Why not?	18:06:46	25	profitability of the product made under the patent.
		Page 223		Page 225
1	A. Because I didn't have -- I mean it didn't	18:06:52	1	So at Paragraph 108 is where I discuss this.
2	even occur to me to apply the entire market value rule		2	BY MR. GLITZENSTEIN:
3	in this case because the products here are		3	Q. In your view, is it relevant to anything 18:11:14
4	multi-feature products that -- and I can't -- I don't		4	else?
5	have any evidence that all of the sales of these		5	A. Not that comes to mind. 18:11:52
6	products are driven by the patented functionality.		6	Q. You mentioned Paragraph 107. So how is 18:11:54
7	Q. If you could turn in your report to	18:07:24	7	Microsoft's total profit relevant to profitability?
8	Paragraph 106, please.		8	A. I'm not sure I understand the question. In 18:12:15
9	A. Yes.	18:07:39	9	fact, I don't understand the question.
10	Q. You state there that "Microsoft has generated	18:07:39	10	Q. Do you understand that there's a distinction 18:12:19
11	more than [REDACTED] in revenue from" Microsoft		11	between profitability and profit?
12	Office. How was that relevant to your analysis and		12	A. I think it depends on the context, but there 18:12:31
13	opinions in this matter?		13	could be a distinction there.
14	(The witness further reviewed Exhibit 1.)		14	Q. What's the distinction? 18:12:35
15	THE WITNESS: Let me just -- let me just say		15	A. I can imagine a situation where profitability 18:12:36
16	that the revenue from sales of Office is relevant		16	refers more to a margin.
17	under the income approach because it's the first step		17	Q. And for purposes of Georgia-Pacific Factor 8, 18:12:48
18	in understanding at-risk profit. Understanding the		18	is profit or profit margin the relevant metric?
19	revenue that's been generated, and how much of that		19	A. I think it depends on the case. They both 18:12:56
20	revenue is at risk without the patented functionality		20	could be relevant.
21	is one of the steps in that process.		21	Q. How was Microsoft's total profit relevant to 18:13:00
22	BY MR. GLITZENSTEIN:		22	any issue in this lawsuit?
23	Q. Is it relevant in any other way?	18:09:03	23	A. You mean Microsoft's total profit as a 18:13:10
24	A. I think it's relevant in the sense that it	18:09:27	24	company?
25	demonstrates the relative importance of Office to		25	Q. Well, the profit numbers that you cite in 18:13:12